

**REMARKS/DISCUSSION OF ISSUES**

Claims 1-12 are pending in the application.

**Once again, the Examiner is respectfully requested to acknowledge the claim for priority and receipt of certified copies of all the priority documents.**

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

**35 U.S.C. § 103**

The Office Action rejects: claims 1-4 and 8-12 under 35 U.S.C. § 103 over Gibbs et al. U.S. Patent 6,169,725 ("Gibbs"); claim 5 over Gibbs in view of Li U.S. Patent 6,519,594 ("Li"); claim 6 over Gibbs in view of Mein et al. U.S. Patent 6,547,066 ("Mein"); and claim 7 over Gibbs in view of Humpleman et al. U.S. Patent 6,182,094 ("Humpleman").

Applicants respectfully traverse those rejections and submits that all of the claims 1-12 are patentable over the cited prior art for at least the following reasons.

**At the outset, Applicants incorporate and reiterate all of the various arguments and remarks submitted in the previously-filed Amendment dated 1 October 2004.**

Meanwhile, the FINAL Office Action dated 23 February 2005 includes a section entitled "Response to Arguments."

Applicants respectfully address the comments in the "Response to Arguments" in the context of each of the rejected claims, as follows.

**Claim 1**

Among other things, the system of claim 1 includes a remote device operative to load an API emulator operative to provide a callable interface for functions of the in-home application protocol, and to supply this API functionality by communicating with a module in the intermediate device using remote protocols.

Applicants respectfully submit that Gibbs wholly fails to disclose or suggest any remote device including this combination of features.

The "Response to Arguments" section in paragraph 23 of the FINAL Office

Action states that:

(1) a Full AV (FAV) node in Gibbs HAVi in-home network corresponds to the recited remote device and that it communicates with the in-home network using remote protocols;

(2) the FAV node does provide a callable interface for functions of the in-home application protocol, and supply this functionality by communicating with a module in any remote protocols;

(3) the predefined message set of Gibbs is a remote application protocol; and

(4) the Office Action has provided support for the motivation for the limitation "establishing a substantially transparent communication path between a portable application program in the remote device and the PAI in the intermediate device." (?)

Applicants respectfully disagree with points (1), (3) and (4), and submit that point (2) is irrelevant as that is not what Applicants have claimed in claim 1.

Turning first to point (1), as taught for example at page 1, lines 7-8, and 17-20 of Applicants' specification, a remote device is "remote", and not an element of the in-home network, nor therefore is it equipped with the in-home protocols. This is consistent with the separate recitations in claim 1 of "an in-home network" and "a remote device."

Meanwhile, Gibbs does not make any mention of any remote device.

Regarding the FAV node, Applicants have disclosed in their own disclosure (see, e.g., page 5, lines 25-29) that an FAV node is one of the types of in-home devices in the HAVi in-home network, and is not a remote device. Gibbs also teaches that the FAV node is part of the HAVi in-home network (see, e.g., col. 3, lines 48-49 and col. 6, 32-35).

Accordingly, Applicants respectfully submit that the FAV node in Gibbs, cited

Action states that:

(1) a Full AV (FAV) node in Gibbs HAVi in-home network corresponds to the recited remote device and it communicates with the in-home network using remote protocols;

(2) the FAV node does provide a callable interface for functions of the in-home application protocol, and supplies this functionality by communicating with a module in an intermediate device using remote protocols;

(3) the predefined message set of Gibbs is a remote application protocol; and

(4) the Office Action has provided support for the motivation for the limitation "establishing a substantially transparent communication path between a portable application program in the remote device and the PAI in the intermediate device." (?)

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Accordingly, Applicants respectfully submit that the FAV node in Gibbs, cited

in the Office Action, is not a remote device part and is instead part of the HAVi in-home network.

Also, in discussing point (1), the "Response to Arguments" section of the FINAL Office Action states - without any support or citation - that the FAV "communicates with the in-home network using remote protocols."

Claim 1 does not merely recite that the remote device "communicates with the in-home network using remote protocols." Instead, claim 1 specifically recites that that the remote device communicates with a module in the intermediate device using remote protocols "including **a remote application protocol which differs from the in-home application protocol.**" Thus, for example, as Applicants have disclosed, a remote device may communicate with a module in an intermediate device of an in-home network using remote protocols (e.g., via the Internet), while the in-home devices may communicate with each other using in-home protocols (e.g., HAVi protocols).

The "Response to Arguments" section in paragraph 23 of the FINAL Office Action fails to address this feature at all. With Gibbs failing to disclose or suggest such a feature, Applicants respectfully submit that claim 1 is patentable over Gibbs.

Indeed, Applicants respectfully submit that, tautologically, the FAV cannot "communicate with the in-home network using remote protocols" which differs from the in-home application protocol. Gibbs teaches that the FAV is **part of** the in-home network. The Examiner appears to concede this (how could he deny it?). Accordingly, tautologically, any protocol by which the FAV communicates with the rest of the in-home network of which it is part, must **be** an in-home protocol, and therefore cannot be a remote protocol which differs from the in-home protocols.

Turning next to point (2), it is noted that claim 1 does not merely recite that the remote device provides a callable interface for functions of the in-home application protocol. Indeed, it can hardly be surprising that Gibbs' FAV provides a callable interface for functions of the in-home application protocol - so does the FAV of Applicant's specification! However, unlike an FAV, a remote device is not equipped with HAVi protocols. So, as recited in claim 1, the remote device is instead

operative to load an API emulator of the in-home application protocol (e.g., an HAVi Java API emulator) so that it can provide a callable interface for functions of the in-home application protocol. For example, as taught at page 6, lines 12-20 of Applicants' specification:

"Unlike the real HJA layer 236 as shown in Fig. 4A, the HJA emulator 310 does not issue HAVi messages directly to a HAVi device. Instead, The HJA emulator 310 ensures that the interaction between itself and the Havlet 238 results in a same interaction with the real HJA 236, which actually provides the functionality. So, the HJA emulator 310 'mimics' the HJA layer 236 by reporting the fact that HJA was called by the HAVi applet 238 and details about the call (like parameters) to the intermediate device 130. The intermediate device 130 is loaded with an additional module 330 which retrieves the information supplied to it by the HJA emulator 310 and issues the corresponding call to the HJA interface 236."

Once again, the "Response to Arguments" section in paragraph 23 of the FINAL Office Action - and indeed, the entire FINAL Office Action - fails to explain where any such emulator is disclosed in Gibbs. And with good reason. Why would one modify an FAV of Gibbs in-home network to emulate a callable interface for functions of the in-home application protocol, when the FAV intrinsically includes a real callable interface for functions of the in-home application protocol?!

Turning next to point (3) the "Response to Arguments" section of the FINAL Office Action states that the predefined message set of Gibbs is a remote application protocol. The "Response to Arguments" section of the FINAL Office Action states then cites a definition of a Simple Object Access Protocol (SOAP), apparently to show that SOAP is a messaging protocol.

Applicants of course acknowledge that SOAP is a messaging protocol. However, Applicants respectfully submit that this does not even remotely

suggest that Gibbs' predefined message set is **a remote application protocol which differs from the in-home application protocol**, as recited in claim 1. At the outset, Gibbs does not discuss SOAP (or XML, or even HTML, for that matter), nor does Gibbs disclose that its predefined message set is compliant with SOAP. Furthermore, Gibbs at col. 7, lines 55-65 clearly describes the predefined message set as being used by all IAV and FAV nodes to access and control devices on the in-home network. So, definitionally, the predefined message set is an in-home application protocol, and cannot by its very nature be a remote application protocol which differs from the in-home application protocol.

Turning finally to point (4), the FINAL Office Action states that:

"Gibbs does not explicitly teach the communication establishes a substantially transparent path between the portable application program in the remote device and the API in the intermediate device"

and that:

"It would have been obvious to one of ordinary skill in the art at the time the invention was made to recognize that in order to manipulate the havlet, the message system has to be used for communicate (sic) between elements because it would allow the remote device to bind the intermediate device to provide service to user, and havlet is cross-platform compatible and portable, the communication is easy and substantially transparent."

Now, this last statement is grammatically flawed, and Applicants originally best understood this to mean that it was being conceded that Gibbs does not disclose such a feature, but that it would have been obvious to modify Gibbs to include such a feature. Such an interpretation seemed to make sense, because if it was the Examiner's position that Gibbs actually discloses such a feature – whether

explicitly or inherently – then it would seem that the Office Action should have rejected claim 1 under 35 U.S.C. § 102, not 103.

Now, however, the “Response to Arguments” section of the FINAL Office Action also states:

“Gibbs teaches all claimed limitations (sic) communication path between a portable application program (havlet, col. 10 lines 2 – 10 and fig. 5) in the remote device (communicate between FAV, IAV) and the API in the intermediate device as argued in point 2.”

Again, this statement is so grammatically flawed as to make its comprehension impossible without resorting to some amount of guesswork.

One thing is certain: in order to make the rejection of claim 1, the FINAL Office Action must be arguing either: (1) that Gibbs actually discloses – explicitly or inherently – that the intermediate device includes a module for communicating between an API emulator in a remote device and an actual API in the intermediate device, establishing a substantially transparent communication path between the portable application program in the remote device and the API in the intermediate device (35 USC § 102); or (2) that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gibbs so that the intermediate device includes a module for communicating between an API emulator in the remote device and an actual API in the intermediate device, establishing a substantially transparent communication path between the portable application program in the remote device and the API in the intermediate device (35 USC § 103). Applicants respectfully submit that there could be no other possible statutory basis for the rejection of claim 1.

If the FINAL Office Action is arguing (1) (i.e., actual disclosure of these features by Gibbs), then it would seem that the Examiner should properly have rejected claim 1 under 35 U.S.C. § 102, not 103. In any event, the FINAL Office Action does cite anything in either the written description or the figures of Gibbs that

supposedly corresponds to the recited module in the intermediate device, nor did it cite a single line of text in Gibbs that discloses establishing a **substantially transparent communication path** between the portable application program in the remote device and the API in the intermediate device. Meanwhile, if the FINAL Office Action is arguing *inherency*, it would advance the prosecution of this application for the Examiner to simply state this on the record, as Applicants would easily traverse any statement of inherency.

If the FINAL Office Action is arguing (2) (that it would have been obvious to modify Gibbs), then Applicants reiterate their statements in the previously-filed Amendment that they respectfully traverse the proposed modification of Gibbs, as lacking any suggestion at all in the prior art and as not even making any sense.

The FINAL Office Action provides absolutely no support for the alleged motivation to combine the references. M.P.E.P. § 2143.01 provides that:

“Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.”

No such teaching or suggestion has been provided here. No assertion of “knowledge generally available to one of ordinary skill in the art” has been made here, and Applicants respectfully request that the Examiner provide an affidavit as required by 37 CFR 1.104(d)(2) if this proposed motive were based on facts within his personal knowledge (see M.P.E.P. § 2144.03).

Accordingly, for at least these reasons, Applicants respectfully submit that claim 1 is patentable over Gibbs.

**Claims 2-4 and 8-9**

Claims 2-4 and 8-9 depend from claim 1 and are therefore deemed to be patentable over Gibbs for at least the reasons set forth above with respect to claim 1.



Claim 5

Claim 5 depends from claim 1. Applicants respectfully submit that Li does not remedy the shortcomings of Gibbs with respect to claim 1. Accordingly, Applicants respectfully submit that claim 5 is patentable over any possible combination of Gibbs and Li for at least the reasons set forth above with respect to claim 1, and for the following additional reasons.

In the system of claim 5, the remote protocols are based on Internet protocols.

The Office Action fairly admits that Gibbs does not disclose or suggest such a feature. However, the Office Action states that Li discloses an Internet protocol and that:

“It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Gibbs and Li’s system because Li’s Internet protocols are suitable and convenience (sic) for the communication of the home audio and video interoperability system.”

Applicants respectfully traverse that statement, and the proposed combination as lacking any suggestion at all in the prior art and as not even being combinable in any event as proposed.

At the outset, the FINAL Office Action provides absolutely no support for the alleged motivation to combine the references. M.P.E.P. § 2143.01 provides that:

“Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.”

No such teaching or suggestion has been provided here.

Furthermore, the references are not even properly combinable as has been proposed. According to the Office Action, the "remote protocols" in Gibbs is a predefined message set. How is one supposed to modify Gibbs to replace or modify the predefined message set to be "based on Internet protocols?" The FINAL Office Action doesn't say. And with good reason, since such a replacement or modification makes no sense.

**The FINAL Office Action fails to address these arguments at all anywhere in the "Response to Arguments" section.**

Accordingly, for at least these additional reasons, Applicants respectfully request that the rejection of claim 5 over the proposed combination of Gibbs and Li be withdrawn.

**Claim 6**

Claim 6 depends from claim 1. Applicants respectfully submit that Mein does not remedy the shortcomings of Gibbs with respect to claim 1. Accordingly, Applicants respectfully submit that claim 6 is patentable over any possible combination of Gibbs and Mein for at least the reasons set forth above with respect to claim 1.

**Claim 7**

Claim 7 depends from claim 1. Applicants respectfully submit that Humpleman does not remedy the shortcomings of Gibbs with respect to claim 1. Accordingly, Applicants respectfully submit that claim 7 is patentable over any possible combination of Gibbs and Li for at least the reasons set forth above with respect to claim 1, and for the following additional reasons.

In the system of claim 7, information to be communicated between an API emulator of a remote device and a module of an intermediate device of the in-home network are described using a mark-up language.

The Office Action fairly admits that Gibbs does not disclose or suggest such a feature. However, the Office Action states that Humpleman discloses a mark-up language and that:

"It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Gibbs and Humpleman's system because Humpleman's XML is well known specifically designed for web documents and enabling the transmission and interpretation of data between applications."

Applicants respectfully traverse the proposed combination of Gibbs and Humpleman.

The "Response to Arguments" section in paragraph 23 of the FINAL Office Action states that:

"Gibbs teaches HAVi system that, and Humpleman also teaches a home audio/video system that provides internet access (co. 20 lines 42-50), so **they are on the same field of the invention and can be combined.**"

FINAL Office Action at page 11, lines 2-5 (emphasis added).

Applicants respectfully submit that the fact that two references are in the same field and "can be combined" does not make their combination proper to sustain a rejection under 35 U.S.C. § 103.

The M.P.E.P. explicitly states:

"FACT THAT REFERENCES CAN BE COMBINED OR MODIFIED IS NOT SUFFICIENT TO ESTABLISH PRIMA FACIE OBVIOUSNESS  
**The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.** In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (Claims were directed to

an apparatus for producing an aerated cementitious composition by drawing air into the cementitious composition by driving the output pump at a capacity greater than the feed rate. The prior art reference taught that the feed means can be run at a variable speed, however the court found that this does not require that the output pump be run at the claimed speed so that air is drawn into the mixing chamber and is entrained in the ingredients during operation. Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, **there must be a suggestion or motivation in the reference** to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992)"

M.P.E.P. § 2143.01 (Emphasis added).

M.P.E.P. § 2143.01 further provides that:

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art."

The FINAL Office Action does not cite anything as providing any such teaching or suggestion. What does the fact that "XML is well known specifically designed for web documents" have to do with Gibbs? Where does Gibbs say anything at all about Web documents? Why would the fact that "XML is well known specifically designed for web documents" lead one to modify Gibbs to produce the system of claim 7? The FINAL Office Action provides absolutely no support for the alleged motivation to combine the references.

Accordingly, for at least these additional reasons, Applicants respectfully

request that the rejection of claim 7 over the proposed combination of Gibbs and Humpleman be withdrawn.

Claim 10

Among other things, the remote device of claim 10 is operative to load an API emulator operative to provide a callable interface for functions of an in-home application protocol, and to supply this API functionality by communicating with a module in an intermediate device using remote protocols, including a remote application protocol which differs from the in-home application protocol.

As explained above with respect to claim 1, Gibbs does not disclose any such remote device, nor does Gibbs disclose any device which is operative to load any API emulator.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 10 is patentable over Gibbs.

Claim 11

Among other things, the intermediate device of claim 11 is operative to communicate with the remote device using predetermined remote protocols including a remote application protocol **which differs from the in-home application protocol**.

As explained above with respect to claim 1, Gibbs does not disclose or suggest any such intermediate device.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 11 is patentable over Gibbs.

Claim 12

At the outset, Applicants respectfully submit that Gibbs does not disclose a communication system including both an in-home network and a remote device.

Among other things, the method of claim 12 includes: (1) a remote device loading and executing an API emulator operative to provide a callable interface for functions of an in-home application protocol, and to supply this API functionality by communicating with a module in the intermediate device using the remote protocols; and (2) an intermediate device loading and executing **a module for communicating**

between the API emulator in the remote device and an API in the intermediate device, establishing a substantially transparent communication path between a portable application program in the remote device and the API in the intermediate device.

As explained above with respect to claim 1, Gibbs does not disclose or suggest any such features.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 12 is patentable over Gibbs.

### **CONCLUSION**

In view of the foregoing explanations, Applicants respectfully request that the Examiner reconsider and reexamine the present application, allow claims 1-12 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283-0720 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment (except for the issue fee) to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees.

Respectfully submitted,

VOLENTINE FRANCOS & WHITT, P.L.L.C.

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By:   
Kenneth D. Springer  
Registration No. 39,843

VOLENTINE FRANCOS & WHITT, P.L.L.C.  
11951 Freedom Drive, Suite 1260  
Reston, Virginia 20190  
Telephone No.: (571) 283-0724  
Facsimile No.: (571) 283-0740